

In general, the imposition of the various local Retailers' Occupation Tax in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a GIL.)

May 20, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 29, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

AAA is expanding into other product lines, and will soon be selling certain clothing items throughout the country. Illinois sales tax law is quite different from most other states, and we need a formal determination of the taxability of our products in Illinois. Accordingly, we have included below statements describing the manufacturing, distribution and sales of these products.

- I. Manufacturing: AAA will initially manufacture/fabricate these clothing items at our facility in STATE. The clothing line can best be described as casual, sportswear, suitable for normal daily wear. This process includes the acquisition of raw textile materials, as well as finished stock items, i.e. t-shirts, coats, jackets, sweatshirts, etc. In some cases, these raw items may be drop-shipped to a third party, subcontractor, for embroidery or other finishing process. Our process will include applying silk-screen printing, decals, or other processes of affixing certain logos, or other markings. Several items will have embroidered labels, patches, or logos. We do not plan to fabricate items strictly for athletic events, or items with sports team insignias or logos.' However, other popular trade name logos may be displayed.
- II. Distribution: The finished products will be temporarily stored in warehouse facilities and shipped via various carriers to our customers/consumers throughout the United States. Initially, the distribution function for embroidered items will be performed by third party, subcontractor processors.
- III. Selling: Our distributor salesmen will be accepting orders for product individually, as well as via telephone, facsimile and email. Brochures will support our product line and price lists, and could grow into a full-line catalog sales function or format.

Based on the above, and the information available on the Illinois website, we believe our products may be taxable in Illinois since they are casual wear clothing. However, we request your comments and determination. In addition, we request you express the detailed guidelines concerning the taxability of items with brand name, trade name, or company logos. Finally, are these products also subject to local sales taxes? We do not anticipate selling uniforms or other clothing items strictly appropriate or designed for athletic events.

Your attention and timely consideration is appreciated. If you need more information, you may contact me.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

Items of tangible personal property that bear advertising inscriptions of the purchaser or someone else, such as clothing, pencils, pens, mirrors, silverware, notebooks, brief cases, wallets, toys, paper weights, and jewelry, have intrinsic usefulness and general utility and so have commercial value (i.e., value to persons other than the purchaser.) This is notwithstanding the fact that such items are personalized for the purchaser by the seller by printing, engraving or some other process by means of which the purchaser's name, monogram, trade-mark or special advertising matter is placed upon the article for the purchaser by the seller. Retail vendors of such items incur Retailer's Occupation Tax liability. This is also true even if the seller produces such items only upon receipt of an order therefor. The value or size of the article sold is not material.

Sellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value to persons other than their customers.

Local taxes may also be imposed. For your general information, please see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the

location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.